because the physical impossibility of possession by both at the same time, renders a joint possession presumed. *Brown* v. *Dickensen*, 27 Gratt. (Va.) 690. The only effect of the indorsement of the maker was to give the joint payee authority to pass title to a third party, and the maker incurred no liability until that was done.

CARRIERS—COMMON LAW RIGHTS UNDER THE COMMERCE ACT.—The defendant had filed with the Interstate Commerce Commission its schedule of rates, giving a shipper the privilege of shipping at a low rate with a limited liability upon the carrier, or at a higher rate with unrestricted liability upon the carrier. The plaintiff tendered a shipment of live-stock for interstate shipment, offering to pay the higher rate in order to secure the unrestricted common-law liability of the carrier. The defendant refused to ship the stock unless the shipper accepted the limited liability contract and the lower rate, which he was forced to do. For injuries to the stock in transit, plaintiff sued the defendant upon his unrestricted common-law liability and the defendant set up the special contract. The court *held*, that under the CARMACK AMENDMENT, fixing liability upon the initial carrier, with the proviso that nothing therein should deprive the shipper of any remedy under existing law, a carrier which by its own wrongful act compelled an interstate shipper to ship under a special contract restricting its liability, and denied him the option of shipping under a higher rate with an unrestricted common-law liability; put itself outside of the statute, and could not deny the shipper his common-law remedy for damages for its failure to safely transport and deliver. *Toledo, St. L. & W. R. Co.* v. *Milner* (Ind. App. 1915), 110 N. E. 756.

The CARMACK AMENDMENT to the INTERSTATE COMMERCE ACT, fixing liability on the initial carrier, contains the proviso: "That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law." There was a great deal of doubt as to the exact meaning of this clause. It was contended at the time that it meant that state legislation on the same subject was not superceded, and that the holder of any such bill might resort to any right of action against such carrier conferred by existing state law. But the court in *Texas & P. R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, held this contention unsound. The court said that it could not in reason be construed as continuing in a shipper a common-law right, the existence of which would be inconsistent with the provisions of the act, since such a construction would destroy the act itself; it was evidently only intended to continue in force such other rights or remedies for the redress of some specific wrong or injury, whether given by the INTERSTATE COMMERCE ACT, or by state statute, or by common-law, not inconsistent with the rules and regulations prescribed by the provisions of the act. This construction was followed in *Adams Express Co.* v. *Croninger* 226 U. S. 491. The court there held that by the INTERSTATE COMMERCE ACT, Congress had manifested an intention to take over the whole field of regulation of rates in interstate commerce, and that it had therefore superceded all state legislation on that

part of the subject. To the same point are *Mo., etc., Ry.* v. *Harriman Bros.*, 227 U. S. 657; *Chi., R. I. & P. Ry.* v. *Cramer*, 232 U. S. 490; *Boston & M. Ry.* v. *Hooker*, 232 U. S. 97. The principal case, giving the shipper a common-law remedy in spite of his special contract, is not inconsistent with the provisions of the Act; it is entirely in harmony with the purposes of the Act, since the carrier by his own wrong had prevented the formation of a valid and binding contract limiting its liability.

CARRIERS—DISCRIMINATION.—The defendant had filed with the Public Utilities Commission of the state its schedule of rates, together with the stoppage privileges accorded to shippers of livestock between different points. The plaintiff made an intra-state shipment of livestock under a contract according him the right of stoppage at a point not included in the schedules filed with the commission. The plaintiff sued for damages resulting from a failure to stop at the point agreed upon in the contract. The court *held*, that the right to stop a shipment of cattle in transit to test an intermediate market is a valuable privilege; and that a special privilege of stoppage granted to one shipper, which is not granted to others under the filed schedules, is a discrimination within the meaning of the statute. The agreement was therefore void, and no recovery could be had for failure to perform it. *Mollohan* v. *Atchison, T. & S. F. Ry.* (Kan. 1916), 154 Pac. 248.

The principal case is in accord with Federal and State cases where similar statutes are in force. It is the duty of the railway company under the common law, and by state and federal statutes, to extend to all persons, without favoritism or discrimination, equal opportunities and facilities for receiving and shipping freights of all kinds of the same class. *Toledo & O. C. R. Co.* v. *Wren*, 78 Oh. St. 137. The ELKINS ACT of Feb. 19, 1903, forbade any person to give or receive any rebate, concession, or discrimination in respect of transportation of any property in interstate commerce, whereby any such property shall be transported at a less rate than named in the tariffs filed and published by such carrier, or whereby any other advantage is given or discrimination is practiced. Under this act damages have been awarded for a discrimination in furnishing cars in favor of competitive points against non-competitive points. *Hawkins* v. *Wheeling & L. E. R. Co.*, 9 I. C. C. Rep. 212. So also it has been held that the following cases were within the act: Undue discrimination against a shipper of hay and grain in favor of competitors, some of whom had elevators, while he had none (*Eaton* v. *C. H. & D. Ry.*, 11 I. C. C. Rep. 619); failure by a railway to furnish cars to a shipper of cross-ties, while it furnished cars to its own agents for the shipping of ties (*Paxton Tie Co.* v. *Detroit So. Ry.*, 10 I. C. C. Rep. 422). A shipper has not only the right to a fair proportion of cars, but may object to a competitor receiving in excess of his fair proportion. *Hillsdale Coal and Coke Co.* v. *Pa. Ry.*, 19 I. C. C. Rep. 356. In *Chicago & A. Ry.* v. *Kirby*, 225 U. S. 155, it was held that it was an undue and unreasonable preference forbidden by the INTERSTATE COMMERCE ACT to accord a shipper a special contract by which the carrier undertook to